

Supporting Document No. 4

Item No. 8
April 9, 2003

ASSEMBLY BILL

No. 1517

Introduced by Assembly Member Plescia

February 21, 2003

An act to amend Sections 13050 and 13373 of, to add Section 13182 to, and to add Chapter 5.10 (commencing with Section 13399.50) to Division 7 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as introduced, Plescia. Stormwater.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards regulate the discharge of stormwater in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

This bill would revise the definition of waste, for the purposes of the Porter-Cologne Water Quality Control Act, to exclude stormwater that benefits a water-dependent natural or man-made habitat or is or will be captured or treated for reuse. The bill would require the state board to adopt regulations concerning the formulation and sale of consumer products, as defined, to achieve reductions in the discharge of harmful substances to waters when those products are used.

The bill would prohibit the state board and the regional boards from prohibiting the discharge of municipal stormwater. The bill would authorize municipalities to transport stormwater instream for initial or subsequent treatment by regional facilities that rely on natural treatment processes. The bill, under certain circumstances, would authorize a municipality to allow a redevelopment project applicant to pay a fee in lieu of implementing stormwater measures. The bill would declare that

a municipality is not liable for discharges from certain facilities or activities.

The bill, under certain circumstances, would require the regional boards to undertake a review of designated beneficial uses and water quality objectives. The board would authorize a regional board to delete certain waterbodies from its water quality control plan. The bill would require certain permits issued to municipal discharges to impose federal requirements on a consistent, statewide basis, and would authorize the imposition of additional requirements only if certain requirements are met. The bill would limit the authority of the state board or a regional board to impose numeric or narrative discharge limitations on discharges from a municipal stormwater system. The bill would limit the regulatory scope of stormwater permits issued to municipalities by prohibiting those permits from affecting matter subject to local land use plans or zoning decisions, or the manner in which local land use decisions are made. The bill would prohibit the state board or a regional board from enforcing certain stormwater-related plans submitted to those agencies by municipalities as permit requirements. The bill would require the state board to ensure that all permits issued to municipal stormwater dischargers, without regard to date of issuance, are consistent with these requirements on or before July 1, 2004.

The bill would require the state board to delegate responsibility for the enforcement of state-issued general permits for stormwater discharges to municipalities. The bill would require the state board to adopt regulations establishing criteria for regulation by municipalities of significant third party stormwater discharges that are not subject to state-issued general permit requirements. The bill would authorize a municipality to develop and implement a watershed management program pursuant to which stormwater-related responsibilities could be reallocated among participating municipalities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Stormwater should be managed as an environmental
- 4 resource, not as a waste.

1 (b) Municipal stormwater discharges are an inevitable
2 consequence of rainfall and necessary flood control precautions.
3 These discharges therefore should not be prohibited, directly or
4 indirectly, by any state board or regional board regulation, plan, or
5 permit.

6 (c) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)
7 requires certain municipalities to implement programs that will
8 prohibit certain nonstormwater discharges, and that will reduce
9 pollutant loads in stormwater discharges, from the municipal
10 sewer system to the maximum extent practicable. Permits issued
11 in accordance with the national discharge elimination system
12 permit program to these municipal dischargers should impose
13 federal requirements on a consistent, state-wide basis.

14 (d) Pollutant loadings in stormwater discharges to receiving
15 waters should be reduced over time, along with reductions in other
16 pollutant loadings, to levels that will allow well-founded water
17 quality objectives to be attained. However, many designated
18 beneficial uses and associated water quality objectives established
19 in plans adopted by the State Water Resources Control Board or the
20 California regional water quality control boards prior to 2003 are
21 not well-founded, because they were based on inadequate or
22 obsolete data or inadequate science, or were developed quickly
23 and long ago without the effective participation of all interested
24 parties. Designated beneficial uses and water quality objectives
25 put in place prior to 2003 should be reviewed and revised based on
26 adequate data and good science, in a process that provides for
27 public participation, before those uses or objectives are used as a
28 basis for imposing requirements on municipal stormwater
29 dischargers that are not practicable and not necessary to prevent
30 nuisance or contamination.

31 (e) Municipal governments are better positioned than the state
32 board and regional boards to establish and implement effective
33 programs for watershed management, including effective
34 programs to control pollution in stormwater. To the maximum
35 extent permitted by federal law, municipal governments that
36 implement effective watershed management programs should be
37 free of unnecessarily intrusive or prescriptive state oversight and
38 control. Municipal governments should also be free to organize
39 stormwater and watershed management responsibilities to
40 conform to local resources and capabilities. State agencies should

1 respect any reallocation of municipal responsibilities that is agreed
2 to by the affected municipal governments.

3 (f) The federal Clean Water Act law requires that municipal
4 dischargers regulate certain categories of sources that are
5 discharged into their stormwater systems. However, state
6 oversight of local environmental regulatory programs can be
7 better achieved by establishing an oversight program, than
8 through requirements imposed in permits.

9 (g) NPDES (national pollutant discharge elimination system)
10 permits issued to municipal stormwater dischargers should
11 regulate the protection of water resources only, and should not
12 intrude on matters that are within the jurisdiction of other state
13 agencies, interfere with municipal authority to regulate land use,
14 or limit municipal discretion to balance conflicting environmental
15 objectives under the California Environmental Quality Act.

16 (h) Unnecessary duplication between state general permit
17 programs for stormwater discharges from construction sites and
18 industrial facilities, and municipal regulation of those stormwater
19 discharges, should be eliminated.

20 (i) State regulation of the sale of certain consumer products in
21 California is necessary to protect water quality.

22 (j) Bond funds made available by the statewide measures
23 approved by the voters to enhance and preserve water quality
24 should be allocated and expended for that purpose.

25 SEC. 2. Section 13050 of the Water Code is amended to read:

26 13050. As used in this division:

27 (a) "State board" means the State Water Resources Control
28 Board.

29 (b) "Regional board" means any California regional water
30 quality control board for a region as specified in Section 13200.

31 (c) "Person" includes any city, county, district, the state, and
32 the United States, to the extent authorized by federal law.

33 (d) ~~"Waste"~~ (1) *Subject to paragraph (2), "waste" includes*
34 *sewage and any and all other waste substances, liquid, solid,*
35 *gaseous, or radioactive, associated with human habitation, or of*
36 *human or animal origin, or from any producing, manufacturing,*
37 *or processing operation, including waste placed within containers*
38 *of whatever nature prior to, and for purposes of, disposal.*

39 (2) *"Waste" does not include stormwater for which either of the*
40 *following applies:*

1 (A) *Benefits a water-dependent natural or man-made habitat.*

2 (B) *Is or will be captured or treated for reuse.*

3 (e) "Waters of the state" means any surface water or
4 groundwater, including saline waters, within the boundaries of the
5 state.

6 (f) "Beneficial uses" of the waters of the state that may be
7 protected against quality degradation include, but are not limited
8 to, domestic, municipal, agricultural and industrial supply; power
9 generation; recreation; aesthetic enjoyment; navigation; and
10 preservation and enhancement of fish, wildlife, and other aquatic
11 resources or preserves.

12 (g) "Quality of the water" refers to chemical, physical,
13 biological, bacteriological, radiological, and other properties and
14 characteristics of water which affect its use.

15 (h) "Water quality objectives" means the limits or levels of
16 water quality constituents or characteristics which are established
17 for the reasonable protection of beneficial uses of water or the
18 prevention of nuisance within a specific area.

19 (i) "Water quality control" means the regulation of any
20 activity or factor which may affect the quality of the waters of the
21 state and includes the prevention and correction of water pollution
22 and nuisance.

23 (j) "Water quality control plan" consists of a designation or
24 establishment for the waters within a specified area of all of the
25 following:

26 (1) Beneficial uses to be protected.

27 (2) Water quality objectives.

28 (3) A program of implementation needed for achieving water
29 quality objectives.

30 (k) "Contamination" means an impairment of the quality of
31 the waters of the state by waste to a degree which creates a hazard
32 to the public health through poisoning or through the spread of
33 disease. "Contamination" includes any equivalent effect resulting
34 from the disposal of waste, whether or not waters of the state are
35 affected.

36 (l) (1) "Pollution" means an alteration of the quality of the
37 waters of the state by waste to a degree which unreasonably affects
38 either of the following:

39 (A) The waters for beneficial uses.

40 (B) Facilities which serve these beneficial uses.

1 (2) "Pollution" may include "contamination."

2 (m) "Nuisance" means anything which meets all of the
3 following requirements:

4 (1) Is injurious to health, or is indecent or offensive to the
5 senses, or an obstruction to the free use of property, so as to
6 interfere with the comfortable enjoyment of life or property.

7 (2) Affects at the same time an entire community or
8 neighborhood, or any considerable number of persons, although
9 the extent of the annoyance or damage inflicted upon individuals
10 may be unequal.

11 (3) Occurs during, or as a result of, the treatment or disposal of
12 wastes.

13 (n) "Recycled water" means water which, as a result of
14 treatment of waste, is suitable for a direct beneficial use or a
15 controlled use that would not otherwise occur and is therefor
16 considered a valuable resource.

17 (o) "Citizen or domiciliary" of the state includes a foreign
18 corporation having substantial business contacts in the state or
19 which is subject to service of process in this state.

20 (p) (1) "Hazardous substance" means either of the following:

21 (A) For discharge to surface waters, any substance determined
22 to be a hazardous substance pursuant to Section 311(b)(2) of the
23 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

24 (B) For discharge to groundwater, any substance listed as a
25 hazardous waste or hazardous material pursuant to Section 25140
26 of the Health and Safety Code, without regard to whether the
27 substance is intended to be used, reused, or discarded, except that
28 "hazardous substance" does not include any substance excluded
29 from Section 311(b)(2) of the Federal Water Pollution Control Act
30 because it is within the scope of Section 311(a)(1) of that act.

31 (2) "Hazardous substance" does not include any of the
32 following:

33 (A) Nontoxic, nonflammable, and noncorrosive ~~storm-water~~
34 *stormwater* runoff drained from underground vaults, chambers, or
35 manholes into gutters or storm sewers.

36 (B) Any pesticide which is applied for agricultural purposes or
37 is applied in accordance with a cooperative agreement authorized
38 by Section 116180 of the Health and Safety Code, and is not
39 discharged accidentally or for purposes of disposal, the application

1 of which is in compliance with all applicable state and federal laws
2 and regulations.

3 (C) Any discharge to surface water of a quantity less than a
4 reportable quantity as determined by regulations issued pursuant
5 to Section 311(b)(4) of the Federal Water Pollution Control Act.

6 (D) Any discharge to land which results, or probably will
7 result, in a discharge to groundwater if the amount of the discharge
8 to land is less than a reportable quantity, as determined by
9 regulations adopted pursuant to Section 13271, for substances
10 listed as hazardous pursuant to Section 25140 of the Health and
11 Safety Code. No discharge shall be deemed a discharge of a
12 reportable quantity until regulations set a reportable quantity for
13 the substance discharged.

14 (q) (1) "Mining waste" means all solid, semisolid, and liquid
15 waste materials from the extraction, beneficiation, and processing
16 of ores and minerals. Mining waste includes, but is not limited to,
17 soil, waste rock, and overburden, as defined in Section 2732 of the
18 Public Resources Code, and tailings, slag, and other processed
19 waste materials, including cementitious materials that are
20 managed at the cement manufacturing facility where the materials
21 were generated.

22 (2) For the purposes of this subdivision, "cementitious
23 material" means cement, cement kiln dust, clinker, and clinker
24 dust.

25 (r) "Master recycling permit" means a permit issued to a
26 supplier or a distributor, or both, of recycled water, that includes
27 waste discharge requirements prescribed pursuant to Section
28 13263 and water recycling requirements prescribed pursuant to
29 Section 13523.1.

30 SEC. 3. Section 13182 is added to the Water Code, to read:

31 13182. (a) The state board shall adopt regulations concerning
32 the formulation and sale of consumer products, to achieve
33 reductions in the discharge of harmful substances to waters when
34 those products are used, if the state board determines that both of
35 the following apply:

36 (1) The regulations are necessary to protect water quality.

37 (2) The regulations are commercially and technologically
38 feasible and necessary.

1 (b) For purposes of this section, "consumer products" has the
2 meaning set forth in paragraph (1) of subdivision (a) of Section
3 41712 of the Health and Safety Code.

4 SEC. 4. Section 13373 of the Water Code is amended to read:
5 13373. (a) The terms "navigable waters," "administrator,"
6 "pollutants," "biological monitoring," "discharge" and "point
7 sources" as used in this chapter shall have the same meaning as in
8 the Federal Water Pollution Control Act and acts amendatory
9 thereof or supplementary thereto.

10 (b) *To the extent permitted by the federal act, requirements*
11 *related to stormwater discharges shall not be deemed or*
12 *determined to be "practicable" by the state board or a regional*
13 *board unless those requirements are technically and institutionally*
14 *feasible, effective in reducing pollution in receiving waters, and*
15 *reasonable in cost considering the pollution reductions achieved.*

16 SEC. 5. Chapter 5.10 (commencing with Section 13399.50)
17 is added to Division 7 of the Water Code, to read:

18
19 CHAPTER 5.10. PROVISIONS RELATING TO THE DISCHARGE OF
20 MUNICIPAL STORM WATER
21

22 13399.50. (a) Notwithstanding any other provision of law,
23 the state board and regional boards may not directly or indirectly
24 prohibit the discharge of municipal stormwater.

25 (b) Notwithstanding any other provision of law, any provision
26 in a water quality control plan established by the state board or a
27 regional board, or any requirement in a municipal stormwater
28 permit, municipalities may transport stormwater instream for
29 initial or subsequent treatment by regional facilities, including
30 engineered flood control facilities, publicly owned treatment
31 works, or instream facilities that rely on natural treatment
32 processes.

33 (c) Notwithstanding any requirement in a municipal
34 stormwater permit, a municipality may allow a redevelopment
35 project applicant to pay a fee in lieu of implementing stormwater
36 measures onsite if those measures would not be practicable. These
37 fees shall be used to mitigate stormwater contamination.

38 (d) Notwithstanding any requirement in a municipal
39 stormwater permit, the state board or a regional board may not
40 require a municipality to impose or enforce any water

1 quality-related requirement on any facility or activity that is
2 subject to reduced state oversight based on a waiver granted by the
3 state board or a regional board, a nonpoint source policy, or a
4 similar policy. A municipality is not liable under this division for
5 exceedances of receiving water quality standards that are caused
6 in part by discharges from those facilities or activities.

7 13399.52. (a) The state board shall ensure that all permits
8 issued to municipal stormwater dischargers, without regard to the
9 date of issuance, are consistent with this chapter on or before July
10 1, 2004. The state board may ensure consistency by issuing a
11 general permit or permits that supersede, in whole or in part,
12 permits issued by a regional board, or by modifying, or requiring
13 the modification of, permits issued by a regional board, as
14 necessary.

15 (b) (1) The state board shall delegate responsibility for the
16 enforcement of state-issued general permits for stormwater
17 discharges to municipalities that seek that delegation and that
18 demonstrate their ability to carry out that responsibility, unless the
19 affected regional board objects.

20 (2) If a regional board objects to that delegation, the state board
21 may determine, notwithstanding that objection, whether to
22 delegate the responsibility to the municipality, and that decision is
23 not subject to judicial review.

24 (3) If responsibility is delegated to a municipality, that
25 municipality may enforce the applicable general permits.

26 (4) If a delegation is sought, and refused, the stormwater permit
27 issued to the municipality shall be modified to eliminate all
28 requirements for regulation by that municipality of the affected
29 dischargers, and any liability on the part of that municipality
30 associated with those discharges.

31 (c) (1) On or before January 1, 2005, the state board shall
32 adopt regulations to establish criteria for regulation by
33 municipalities of significant third party stormwater discharges that
34 are not subject to state-issued general permit requirements.

35 (2) The state board shall consult stakeholder groups, including
36 the California Stormwater Quality Association, for the purposes
37 of carrying out paragraph (1).

38 (3) The regulations shall authorize municipalities to enter into
39 regional agreements to undertake that regulation described in
40 paragraph (1), and shall provide for local or regional fees to pay

1 for that regulation, and for state regulation, at the discretion of a
2 municipality, if that municipality determines that the regulation
3 undertaken by the municipality is unduly burdensome or costly.

4 (4) The regulations may not provide for the imposition of fines
5 or penalties on municipalities based on program deficiencies, but
6 shall provide for state oversight of municipal regulation, and for
7 the revocation of inadequate local programs by the state board.

8 (5) Municipal regulatory programs established pursuant to
9 these regulations shall supplant any related provisions in an
10 NPDES permit issued to the affected municipalities.

11 (d) All municipalities in the state may participate in any state
12 board proceeding held for the purposes of carrying out subdivision
13 (a) or (c).

14 13399.54. (a) Each regional board shall determine whether
15 the beneficial uses and water quality objectives set forth in its
16 water quality control plan may be achieved without imposing
17 requirements on municipal storm water discharges that exceed the
18 requirements authorized by subdivision (a) or (b) of Section
19 13399.56. This determination shall be made only after
20 independent peer review, public notice, and public comment.

21 (b) (1) If the regional board determines that any designated
22 beneficial uses or water quality objectives cannot be attained
23 without imposing additional requirements on discharges of
24 municipal stormwater, the regional board shall undertake a
25 thorough review of these beneficial uses and water quality
26 objectives.

27 (2) For the purposes of carrying out subdivision (a), the
28 regional board may not rely on prior determinations by the state
29 board or the regional board. The review shall be based on adequate
30 and recent data, and appropriate scientific and economic analysis
31 methods. The review shall identify the beneficial uses and water
32 quality objectives to be applied to the affected body of water in the
33 future, during storm events and under dry weather conditions,
34 taking into consideration the factors enumerated in Section 13241,
35 the total and marginal benefits that would be provided by attaining
36 the proposed water quality objective, the total and marginal costs
37 of attaining those objectives, and the ability of municipal
38 dischargers to bear additional stormwater costs in the context of
39 available revenues and competing needs for municipal revenues.

1 These determinations shall be made only after independent peer
2 review, public notice, and public comment.

3 (3) A regional board may delete ditches, washes, and gullies
4 from its water quality control plan in lieu of carrying out duties
5 required by subdivision (a) or (b) with regard to those ditches,
6 washes, and gullies.

7 13399.56. (a) NPDES permits issued to municipal
8 dischargers shall impose federal requirements, including
9 prohibitions on nonstormwater discharges and requirements
10 imposed to reduce pollution in discharges from the municipal
11 stormwater system to the maximum extent practicable, on a
12 consistent, state-wide basis.

13 (b) The state board and regional boards may impose additional
14 requirements on municipal stormwater discharges, whether or not
15 those requirements are practicable, if those requirements are
16 necessary to prevent "nuisance" or "contamination."

17 (c) No requirements other than those authorized by subdivision
18 (a) or (b) may be included in a municipal stormwater permit unless
19 all of the following requirements are met:

20 (1) Compliance with Section 13399.54 has been achieved and
21 the state board or the regional board determines that the imposition
22 of additional requirements is necessary.

23 (2) The total maximum daily load (TMDL) that is appropriate
24 for the affected water body, and a waste load allocation for that
25 TMDL, have been determined.

26 (3) The pollution reduction obligations imposed on municipal
27 dischargers through the waste load allocation process are fair and
28 appropriate.

29 (4) The municipalities discharging to the affected water body
30 have not established and maintained a high-quality watershed
31 management program, as defined in subdivision (c) of Section
32 13399.58.

33 (d) No numeric or narrative discharge limitations may be
34 imposed on discharges from a municipal stormwater system,
35 without the consent of the affected municipality, unless paragraphs
36 (1) to (4), inclusive, of subdivision (c) apply.

37 (e) NPDES permits issued to municipal stormwater
38 dischargers shall regulate the protection of water resources only,
39 and may not regulate matters that are within the jurisdiction of
40 other state agencies. These permits may not include requirements,

1 other than those authorized by subdivision (a) or (b), that would
2 limit the ability of municipalities to balance conflicting
3 environmental objectives under the California Environmental
4 Quality Act (Division 13 (commencing with Section 21000) of the
5 Public Resources Code) or to make decisions based on overriding
6 considerations when consistent with that act.

7 (f) NPDES permits issued to municipal stormwater dischargers
8 may not include provisions that affect matter subject to local land
9 use plans, zoning ordinances, or related plans or ordinances, or the
10 manner in which local land use decisions are made.

11 (g) For the purposes of this section, a waste load allocation is
12 "fair" if all other significant direct, indirect, point source and
13 nonpoint source dischargers who could reduce discharges of the
14 targeted pollutant at the same cost or a lower cost, are required by
15 ____ to significantly reduce their discharges of that pollutant. If
16 feasible, cost comparisons for purposes of this subdivision shall be
17 based on incremental or marginal costs per unit of pollutant
18 removed, not on average costs. All significant costs incurred to
19 achieve a reduction in pollutant discharges shall be considered
20 whether or not those costs are directly incurred by the discharger.

21 (h) For the purposes of this section, a waste load allocation to
22 a municipal discharger is "appropriate" if either one of the
23 following applies:

24 (1) The municipal discharger is able to bear the cost of
25 conforming to that allocation, taking into account the revenues
26 available to that municipality and competing needs for those
27 municipal revenue.

28 (2) The municipal discharger has not imposed fees on
29 dischargers as authorized by state law, or has not sought voter or
30 land owner approval of a tax or fee to pay for local water quality
31 programs.

32 (i) (1) The state board and regional boards may require
33 municipal stormwater dischargers to submit plans, and those plans
34 may be reviewed by the state board or a regional board to
35 determine whether those adequately describe programs that will
36 meet the requirements of the permit.

37 (2) Notwithstanding paragraph (1), NPDES permits issued to
38 municipal stormwater dischargers may not provide that the
39 contents of those plans or other submissions will be enforceable
40 under the permit.

1 (3) All enforceable terms of an NPDES permit shall be set forth
2 in the permit, and shall be adopted by the state board or regional
3 board as permit conditions pursuant to this division.

4 13399.58. (a) Municipalities may develop and implement
5 watershed management programs that incorporate regional
6 programs for stormwater management. These programs may
7 provide for the reallocation of stormwater-related responsibilities
8 among the participating municipalities, or to a new entity or
9 authority created for that purpose pursuant to state law.

10 (b) If in the judgment of _____ the participating municipalities
11 implement and maintain a high quality watershed management
12 program, municipalities are not liable for any violation of an
13 NPDES permit requirement that has been effectively supplanted
14 by the watershed management program.

15 (c) For purposes of this division, a watershed management
16 program is "high quality" if _____ determines that all of the
17 following apply:

18 (1) The program identifies high priority water bodies in a
19 manner consistent with the applicable NPDES permit, and
20 includes activities that seek to protect those water bodies.

21 (2) The program identifies the type and intensity of land uses
22 found in the watershed, and assesses the effects of those land uses
23 on water quality, habitats, and other environmental resources in
24 the watershed, and the municipalities with land use jurisdiction in
25 the watershed attempt to ensure that new development meets a
26 community's diverse needs while protecting natural resources.

27 (3) The program provides for enhancements to water quality in
28 the watershed that are comparable to the enhancements that could
29 also be achieved through other mandatory stormwater
30 management programs.

31 (4) The program identifies scientifically supported priority
32 issues in the watershed, and includes programs to address those
33 issues.

34 (5) The program was developed through a process that
35 included reasonable public participation, and provides for
36 continued reasonable public participation.

37 (6) The program includes an adaptive management process that
38 allows adjustments as new information becomes available.

39 (7) Within four years after the date on which the program is
40 established, the quality of waters in the watershed has improved

- 1 with respect to some or all of the pollutants for which those waters
- 2 have been designated as "impaired" pursuant to subsection (d) of
- 3 Section 1313 of Title 33.